

THIS AGREEMENT made effective the _____ day of _____, 20_____.

BETWEEN:

(the "**Community**")

- and -

(the "**Engineer**")

ENGINEERING SERVICES AGREEMENT

WHEREAS:

- A. The Community requires the services of the Engineer in connection with the provision of engineering services relating to the Project;
- B. The Community and the Engineer have reached agreement with respect to the terms and conditions under which the Engineer will provide such services to the Community;

NOW THEREFORE, in consideration of the promises, mutual terms, covenants and conditions herein, the parties hereto agree as follows:

1. DEFINITIONS

1.1 In this Agreement:

- (a) "**Construction Contract**" means an agreement between the Community and each engineer engaged to construct all or any portion of the Project;
- (b) "**Engineer**" means the third party(s) contracted by the Community to construct the Project;
- (c) "**Event of Default**" means, with respect to the Engineer, if:
 - (i) the Engineer neglects or fails to observe, perform or comply with any of its obligations or covenants pursuant to this Agreement, and:
 - (A) such neglect or failure is not cured within five (5) days after being required in writing to do so by the Community, or
 - (B) if such neglect or failure is not capable of being cured within five (5) days as aforesaid but can be cured within a reasonable period of time by a reasonable effort by the Engineer, the Engineer has not commenced to cure such neglect or failure within the said five (5) day period and has not continued to effectively and diligently cure such neglect or failure within such reasonable period of time;
 - (ii) an assignment of the Engineer's assets for the benefit of its creditors or makes a proposal to its creditors under any bankruptcy or insolvency legislation of any jurisdiction;

- (iii) a petition in bankruptcy is filed and presented against the Engineer or a receiver, receiver and manager, custodian or similar agent is appointed or takes possession of any property or business of the Engineer;
 - (iv) the Engineer ceases or threatens to cease to carry on its business;
 - (v) an execution, sequestration, extent or other process of any court becomes enforceable against the Engineer or a distress or analogous process is levied upon the property of the Engineer; or
 - (vi) any of the representations or warranties given hereunder are found to be incorrect or untrue and, as result, have a material, adverse effect upon the provision of the Services;
- (d) "**Fees**" means the fees and expenses that the Community shall cause to be paid to the Engineer as set forth in **Schedule "B"** hereto;
 - (e) "**Force Majeure**" means any act of God, major storms, civil disturbance or any similar major event or occurrence not within the control of a party and which by the exercise of due diligence by such party could not have been prevented, but lack of funds on the part of such party shall be deemed not to be a Force Majeure;
 - (f) "**Performance Requirements**" means those certain requirements and performance levels set forth within **Schedule "C"** attached to this Agreement;
 - (g) "**Project**" means **[NOTE: Insert description of Project – for example, "the development of a 2 lane roadway from _____ to _____"]**;
 - (h) "**Services**" means the preparation of detailed engineering plans for Community approval, site supervision and inspection, construction survey, construction management, and post construction services, together with related ancillary activities associated with completing the Project, as more particularly identified in **Schedule "A"** hereto;
 - (i) "**Term**" means the period of time beginning on the date first written above and ending upon the earlier of completion of the Project, as determined by Community in its sole discretion, or when terminated in accordance with the terms of this Agreement; and
 - (j) "**Work Product**" means any and all materials, reports, documentation, and other items made, prepared or produced for the Community by or on behalf of the Engineer or any of its employees and Engineers as part of the provision of the Services (whether then provided or delivered to the Community, or not), including related materials, regardless of media or format.

2. PREAMBLE AND SCHEDULES

2.1 The parties hereby confirm and ratify the matters contained and referred to in the Preamble to this Agreement and agree that same and the various schedules hereto are expressly incorporated into and form part of this Agreement:

- Schedule "A"** - Services
- Schedule "B"** - Fees & Expenses
- Schedule "C"** - Performance Requirements
- Schedule "D"** - Hourly Rates and Disbursements

3. OBLIGATIONS

3.1 During the Term, the Engineer shall:

- (a) perform the Services faithfully, to the same standard as a prudent engineer would in the circumstances, exercising reasonable best efforts, and in accordance with and subject to the terms and conditions contained in this Agreement, including, without restriction, the Performance Requirements;
- (b) provide qualified staff to provide the Services;
- (c) be bound by and observe all applicable federal, provincial and municipal legislation and related regulations and the Engineer shall cause all of its employees and approved sub-consultants to be so bound;
- (d) obtain and maintain at its sole expense all necessary permits, licenses, consents and approvals required by all authorities having jurisdiction incidental to the performance of the Engineer's obligations under this Agreement and the Engineer shall cause all of its employees and approved sub-consultants to likewise;
- (e) pay all fees and all other costs incidental to the performance of the Engineer's obligations under this Agreement (subject always to the payment of the Fees as contemplated herein);
- (f) provide all such reasonable written and verbal reports as required by the Community on the progress of the Services. The Engineer will make available such information, including data and documents, as the Community may require from time to time to allow the Community to evaluate the quality and progress of the Services; and
- (g) upon receipt of request from the Community, provide evidence of full compliance with all requirements of the *Workers' Compensation Act* (Northwest Territories) to and including the dates of such requests, such evidence to include the Engineer and any and all sub-consultants employed to provide the Services.

3.2 The Community shall:

- (a) give due consideration to all sketches, drawings, reports, tenders, proposals and other information laid before it by the Engineer and shall give their decision in such reasonable time as not to delay the work of the Engineer; and
- (b) provide the Engineer with the following information, except where the Engineer is specifically required to provide the same according to this Agreement:
 - (i) all pertinent information which may affect the Services; and
 - (ii) copies of all bids and contracts for the work the Engineer is responsible for and copies of all quotations, all certificates for payment and final accounts in connection with the Services if they do not originate in the Engineer's office.

4. **SUBCONTRACTORS**

4.1 The Engineer shall not engage or retain any agent, contractor or any other third party for purposes of providing the Services hereunder, in whole or in part, without first:

- (a) causing such agent, contractor or any third party to be bound by all covenants and obligations of the Engineer under this Agreement as such relate to those of the Services being provided by such persons respectively; and
- (b) obtaining the prior written consent of the Community which consent may be arbitrarily withheld.

The use of any agents, contractors or any other third parties by the Engineer shall in no way relieve the Engineer from its responsibility and obligation to provide the Services in accordance with the provisions of this Agreement.

Further, the Engineer shall, in providing the Services:

- (c) provide for the coordination of the activities and work of its own forces and any contractors;
- (d) assume overall responsibility for compliance with all applicable legislation in carrying out the Services by itself and all of its contractors; and
- (e) not change or terminate any of its contractors without obtaining the prior written consent of the Community which consent may be arbitrarily withheld.

4.2 The Engineer shall forthwith remove from the performance of the Services any employee, agent or contractor who is unsatisfactory to the Community, acting reasonably. Any costs or expenses associated with removal of any such employee, agent or contractor shall be the responsibility of the Engineer.

5. PAYMENT OF FEES

5.1 The Community will be responsible for the payment of the Fees to the Engineer following receipt of invoice and in accordance with the payment terms set forth in **Schedule "B"** hereto, plus any applicable GST thereon.

6. TAXES AND DEDUCTIONS

6.1 The Engineer shall be responsible to collect, remit, and pay all source deductions, Canada Pension contributions, employment insurance premiums, taxes and GST and all other required payments, contributions or deductions under all applicable laws and authorities including, but not limited to, any assessments levied pursuant to the *Workers' Compensation Act* (Northwest Territories) which arise or may hereafter arise with respect to the performance of the obligations of the Engineer under this Agreement and the Community shall not have liability for the same.

7. CONCURRENT RETAINERS

7.1 The Engineer may accept concurrent contracting retainers from other parties during the currency of this Agreement.

8. WARRANTIES AND REPRESENTATIONS

8.1 The Engineer hereby represents and warrants with and to the Community, and acknowledges that the Community are relying upon such representations and warranties, that during the currency of this Agreement:

- (a) the Engineer is in compliance with all laws and regulations of any public authority relating to the conduct of its business and has all required approvals, permits, licenses, certificates and authorizations necessary to carry on its business and to carry out its obligations hereunder and there are not any proceedings whatsoever, actual or pending, and whether concerning cancellation, extension or otherwise, relating to the said approvals, permits, licenses, certificates or authorizations; and
- (b) The Engineer is experienced in the performance of all aspects of the Services, and is capable of performing the Services in accordance with the terms, covenants and conditions contained in this Agreement including, without restriction, the Performance Requirements.

9. INSURANCE

[BLLP NOTE: We strongly recommend that the Community discuss insurance requirements with its insurance advisor for each Engineering Services Agreement. This section will need to be revised accordingly, based on the insurance requirements suggested by the Community's risk management

advisors.]

- 9.1** Without in any way limiting the liability of the Engineer under this Agreement, the Engineer shall be responsible for obtaining and maintaining any insurance which may be required by law or merely required for the protection of the Engineer and any employees, agents or approved sub-consultants. As a minimum such insurance shall include:
- 9.2** **Commercial General Liability** Insurance with limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury, death and property damage including loss of use thereof. This insurance shall be maintained continuously from commencement of the work until not less than 12 months from the date of the Final Certificate of Completion. The insurance policy shall include but is not limited to:
- a.** Premises, Property and Operations Liability
 - b.** Products and Completed Operations Liability
 - c.** Owners and Contractor's Protective Liability
 - d.** Blanket Written Contractual Liability
 - e.** Broad Form Property Damage Extension
 - f.** Personal Injury Liability
 - g.** Employees as Additional Insured
 - h.** Cross Liability
 - i.** Contingent Employers Liability
 - j.** Non-owned Automobile Liability SPF # 6
- 9.3** This policy must show the Community as an additional but only with respect to the operations of the named insured. The policy will also be endorsed to provide 30 days written notice of cancellation or reduction in the insurance coverage to the Community by the insurer.
- 9.4** **Automobile liability insurance** with respect to Engineer's owned and leased, licensed vehicles used directly or indirectly in the performance of the work with limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury death and property damage as per Standard Policy Form # 1.
- 9.3** **Professional liability insurance** providing coverage of at least **TWO MILLION (\$2,000,000.00) DOLLARS** per occurrence, and **TWO MILLION (\$2,000,000.00) DOLLARS** annual aggregate.
- 9.4** **Workers' Compensation** coverage for all employees, if any, engaged by the Engineer in accordance with the laws of the Northwest Territories;
- 9.5** Such other insurance as the Community may from time to time reasonably require.
- 9.6** Within 14 days after acceptance of the Contract the Engineer shall, unless otherwise directed in writing be the Community, deposit with the Community an Insurer's Certificate of Insurance in a form acceptable to the Community and if requested, the originals or certified true copies of all insurance contracts maintained by the Engineer pursuant to the insurance coverage requirements shown hereunder.
- 9.7** The provisions of the insurance coverage requirements contained hereunder are not intended to cover all of the Engineers risk under this contract. Any additional risk management measures or additional insurance coverage the Engineer may deem necessary to fulfill its obligations under this contract shall be at the Engineer's own discretion and expense.
- 10. INDEMNITY AND WARRANTY**
- 10.1** The Engineer shall at all times and without limitation, indemnify and save harmless the Community, and their respective elected officials, officers, employees, agents, insurers and representatives from and against all

liabilities, losses, costs, damages, legal fees (on a solicitor and his own client full indemnity basis), disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands and proceedings, all of whatever nature and kind which the Community or its elected officials, officers, employees, agents, insurers and representatives may sustain, pay or incur or which may be brought or made against all or any of them, and whether or not incurred in connection with any action or other proceedings or claims or demands made by third parties, with respect to any occurrence, event, incident or matter caused by, and/or arising as a direct or indirect result of:

- (a) the misconduct, negligent action or negligent failure to act of the Engineer and/or any of those persons for whom the Engineer is responsible at law (including, without limitation, any of its employees or sub-consultants) in the performance or non-performance of the Services; or
- (b) any breach, violation or non-performance of any representation, warranty, obligation, covenant, condition or agreement in this Agreement set forth and contained on the part of the Engineer to be fulfilled, kept, observed or performed, as the case may be; or
- (c) any damages to third parties caused by, resulting at any time from, arising out of or in consequence of the misconduct, negligent action or negligent failure to act of the Engineer and/or any of those persons for whom the Engineer is responsible at law (including, without limitation, any of its employees or sub-consultants).

The provisions of this Section are in addition to and shall not prejudice any other rights of the Community at law or in equity. This Section shall survive the termination or expiry of this Agreement for any reason whatsoever.

10.2 The Engineer warrants to the Community that:

- (a) all Services provided by the Engineer shall materially conform to the description of the Services provided under this Agreement;
- (b) all Work Product shall be free from defects; and
- (c) the performance of the Services will be performed to the same standard or performance quality that a reasonable engineer would so perform in similar circumstances.

10.3 If the Community provides written notice of a breach of this warranty to the Engineer during the currency of this Agreement or for a period of two years after the latter of the Community providing a written acknowledgement to the Engineer that the Project is complete, the Engineer shall remedy, or cause to be remedied, the resultant defect that occurred due to the breach at the sole and absolute cost of the Engineer. Without limitation to any other remedy, should the work not be performed to the Community's satisfaction, acting reasonably, the Engineer shall refund the Fees that were paid by the Community, to the Engineer for that portion of the Services that the breach involves.

11. **CONFIDENTIAL INFORMATION**

11.1 All Work Product and all other information and data received and compiled by the Engineer, while performing the Services, shall be treated as confidential for the benefit of the Community and shall not be disclosed or made known to any other person except as authorized by the Community. The Engineer acknowledges and agrees that the Community is the sole legal and beneficial owner of any and all of the Work Product. This Section shall survive the termination or expiry of this Agreement.

12. **ACCESS TO INFORMATION AND PROTECTION OF PRIVACY**

12.1 Notwithstanding the termination or expiry of this Agreement, the Engineer acknowledges that information and records compiled or created under this Agreement which are in the custody of the Engineer are subject to the *Access to Information and Protection of Privacy Act*. If a request is received for any of these records, the

Engineer shall forward the information and records, at the Engineer's expense, to the Community within **five (5)** calendar days of official notification by the Community.

- 12.2 The Community shall furnish to the Engineer such information in its possession reasonably required for the proper performance of the obligations of the Engineer, and shall, in every way provide such cooperation as is reasonable in order for the Engineer to be able to perform the Services.
- 12.3 The Engineer shall retain all information and records received or compiled by the Engineer in accordance with this Agreement for a period of SIX (6) months from the date of termination of this Agreement, after which the information and records will be transferred to the possession of the Community.

13. **SUSPENSION & TERMINATION**

- 13.1 Notwithstanding anything contained within this Agreement, the Community may at any time in writing instruct the Engineer to suspend the performance of part or all of the Services for such time as the Community sets out in its notice of suspension including, without restriction, due to the Community:
- (a) having a reasonable concern respecting the on-going safety of the Engineer and its employees, agents and sub-consultants (if any), any property of the Community, or the public at large (or any portion thereof);
 - (b) determining that the Engineer has failed to perform the Services in accordance with this Agreement including, without restriction, the Performance Requirements;
 - (c) acting reasonably, determining that the Engineer does not have the financial capability to perform its obligations under this Agreement; or
 - (d) determining, acting reasonably, that the specific project or task is unnecessary, or that a change in instructions is necessary.

Such notice shall state the cause for the suspension. The Engineer shall during any period of suspension continue to perform its obligations to insure in accordance with the Agreement.

- 13.2 After receipt by the Engineer of the Community's permission to resume the Services following any suspension of the Services, the Community and the Engineer shall jointly examine the Services affected by the suspension and thereafter determine and agree upon, each acting reasonably, the amendments necessary to the performance deadlines contemplated within this Agreement.
- 13.3 This Agreement may be terminated for convenience at any time by the Community for any reason and in the sole discretion of the Community, upon fourteen (14) days written notice to the Engineer and the Engineer's right to consideration shall be limited to payment for the Services performed in accordance with the terms, covenants and conditions contained within this Agreement and not previously paid for up to the date of termination. The Engineer specifically agrees that the notice and consideration set forth in this paragraph constitutes reasonable, fair and equitable notice and compensation for damages, if any, that may be suffered by the Engineer as a result of the termination of this Agreement.
- 13.4 If such notice is given as per Section 13.3, the Engineer shall perform the Services up to and including the effective date of termination specified in the notice and shall, upon request, provide the Community with a written report on the Services rendered to the time of termination. Except for any such report, the Engineer shall not perform any further Services subsequent to the effective date of termination.

14. **EVENT OF DEFAULT**

14.1 Upon the occurrence of an Event of Default, and without limitation to any of the Community's other rights in Section 14 hereof, the Community may, without prejudice to any of their other rights at law or equity, do one or more of the following:

- (a) pursue any remedy available to the Community in law or in equity, it being acknowledged that specific performance, injunctive relief, mandatory or otherwise or other equitable relief may be the only actual remedy;
- (b) terminate this Agreement by written notice thereof given to the Engineer, in which case the Engineer shall have no claim for payment or otherwise against the Community; or
- (c) waive the Event of Default, provided however, that any such waiver shall not operate as a waiver of any subsequent or continuing the Event of Default.

14.2 Upon the occurrence of an Event of Default under Section 1.1(c)(i), the Community shall have the right, but shall have no obligation, to remedy the deficiency to the Community's satisfaction at the sole expense of the Engineer and shall be entitled to any remedies that may be available to the Community at law, equity or otherwise.

15. SET OFF RIGHT

15.1 In addition to and without prejudice to all other rights of the Community, howsoever arising, if the Engineer fails to make any payment to any third party for which the Community is or, acting reasonably, determines that it will be liable or subject to action for, and the Engineer has not made the payment within ten (10) days of being requested to do so by the Community, the Community may pay such third party on behalf of the Engineer.

15.2 Any amount paid by the Community under this Article 14 and any damages, expenses, costs (including legal fees on a solicitor and his own client full indemnity basis) incurred or suffered by the Community as a result of an Event of Default shall constitute a debt due and owing to the Community. The Community may set-off such amount against any sum of money owed by the Community to the Engineer, as such may exist from time to time, until all amounts owing to the Community have been completely set off, without further action or notice to the Engineer.

15.3 The exercise by the Community of the rights set out in this Section shall not limit or prejudice any other rights of the Community, howsoever arising and the Community's rights set out in this Section shall survive the expiry or termination of this Agreement.

16. FORCE MAJEURE

16.1 If the parties shall fail to meet their respective obligations hereunder within the respective time prescribed therefor and such failure shall be directly caused or materially contributed to by an event of Force Majeure, such failure shall be deemed not to be a breach of the obligations of such party, provided however, in such event, such party shall:

- (a) immediately notify the other party of the circumstances of the event of Force Majeure, the extent to which the performance of obligations under this Agreement are affected, and the actions taken by the said party to mitigate against the effects of the event of Force Majeure; and
- (b) use its best efforts to put itself in a position to carry out its obligations hereunder as soon as reasonably possible.

16.2 In no event shall the relief provided in respect of the occurrence of an event of Force Majeure exceed ninety (90) days.

17. **GENERAL**

17.1 **Notices**

Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing.

Any Notice required or permitted hereunder shall be sent to the intended recipient at its address as follows:

[BLLP NOTE: Insert contact person's details for the Community]

 Attention: _____ **[BLLP NOTE: Insert position/title]**
 E-mail: _____
 Fax: (____)____-_____

[BLLP NOTE: Insert contact details for Engineer]

(i) _____:

 Attention: _____ **[BLLP NOTE: Insert position/title]**
 E-mail: _____
 Fax: (____)____-_____

or to such other address as each party may from time to time direct in writing.

Notice shall be served by one of the following means:

- (a) by delivering it to the party on whom it is to be served. Notice delivered in this manner shall be deemed received when actually delivered to such party;
- (b) if delivered to a corporate party, by delivering it to the address specified in above during normal business hours. Notice delivered in this manner shall be deemed received when actually delivered;
- (c) by fax or email to the party on whom it is to be served. Notice delivered in this manner shall be deemed received on the earlier of:
 - (i) if transmitted before 3:00 p.m. on a Business Day, on that Business Day; or
 - (ii) if transmitted after 3:00 p.m. on a Business Day, on the next Business Day after the date of transmission; or
- (d) by mailing via first class registered post, postage prepaid, to the party to whom it is served. Notice so served shall be deemed to be received five (5) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received.

17.2 **Governing Law**

This Agreement shall be construed and governed by the laws of the Northwest Territories and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the exclusive jurisdiction of the Courts of the Northwest Territories.

17.3 Time of Essence

Time shall be of the essence of this Agreement.

17.4 Headings

The headings, captions, paragraph numbers, sub-paragraph numbers, article numbers and indices appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, construct or enlarge the scope or meaning of this Agreement or any provisions hereof.

17.5 Relationship between Parties

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein nor any act of the parties hereto shall be deemed to create any relationship between the parties hereto other than an independent service agreement between the two parties at arm's length.

17.6 No Authority

Except as may from time to time be expressly stated in writing by the one party, the other party has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the other party, nor to bind the other party in any manner whatsoever. Without restricting any of the foregoing, unless otherwise specifically authorized and documented between the parties at no time shall the Engineer have authority to bind the Community as their agent or otherwise, nor make representations or warranties for or on behalf of the Community.

17.7 Agreement Entire Relationship

This Agreement constitutes the entire agreement between the parties hereto and the parties acknowledge and agree that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement save as expressly set out in this Agreement.

17.8 Further Assurances

Each of the parties do hereby agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

17.9 Amendments

This Agreement may not be altered or amended in any of its provisions, except where any such changes are reduced to writing and executed by the parties.

17.10 Waiver

No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder.

Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

17.11 Counterparts

This Agreement may be executed and delivered in any number of counterparts, by facsimile copy, by electronic or digital signature or by other written acknowledgement of consent and agreement to be legally bound by its terms. Each counterpart when executed and delivered will be considered an original but all counterparts taken together constitute one and the same instrument.

17.12 Statutory Reference

Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto and promulgated thereunder with all amendments made thereto and in force from time to time and any final judicial decisions interpreting the same, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.

17.13 Unenforceability

If any term, covenant or condition of this Agreement or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest permitted by law.

17.14 Survival

The parties acknowledge and agree that the provisions of this Agreement which, by their context, are meant to survive the termination or expiry of this Agreement shall survive the termination or expiry of this Agreement and shall not be merged therein or therewith.

17.15 Remedies Generally

Mention in this Agreement of any particular remedy of a party in respect of a default by the other parties does not preclude the first party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No remedy shall be exclusive or dependent upon any other remedy, but a party may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative.

17.16 Payment of Monies

The parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds.

17.17 GST Exclusive

All amounts payable by the Community to the Engineer hereunder will be exclusive of any goods and services tax ("GST") and the Community will, in addition the amounts payable hereunder, pay to the Engineer all amounts of GST applicable thereon. The Engineer's GST number is _____. **[BLLP NOTE: fill in GST number.]**

17.18 Singular, Plural and Gender

Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires and the provisions hereof.

17.19 Binding Effect

This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of all of the parties.

17.20 Assignment

Neither party may assign its interest in this Agreement, or any part hereof, in any manner whatsoever without having first received the written consent from the other party, which consent may be arbitrarily withheld.

17.21 Requests for Consent

All parties shall provide any decision with regard to a request for consent in a timely manner.

17.22 Construction

This Agreement shall be interpreted according to its fair construction and shall not be construed as against any party hereto.

17.23 Independent Legal Advice

Each party hereto acknowledges having read this Agreement and prior to executing the same acknowledges and agrees that it has been advised by the other party hereto to obtain independent legal advice and other professional advice prior to executing this Agreement. By executing this Agreement, each party hereto acknowledges and agrees that such party hereto has had the opportunity to seek independent legal and other professional advice prior to executing this Agreement, and:

- (a) has obtained such independent legal and other professional advice; or
- (b) has waived the right to obtain such independent legal and other professional advice.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective the ____ day of _____, 20__.

[NAME OF COMMUNITY]

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

[NAME OF ENGINEER]

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

[BLLP NOTE: USE IF ENGINEER IS AN INDIVIDUAL]

SIGNED, SEALED and DELIVERED by NAME)
OF SIGNATORY, in the presence of:)

_____))
Signature)

_____))
Printed Name)

_____))
Address)

_____))
Occupation)

_____) (s)
NAME OF SIGNATORY

SCHEDULE "A"

SERVICES

[BLLP NOTE: Community to fill in Schedule as necessary. This is sample description to give the Community some ideas as to how to complete this]

The Services are set out in four phases. The Engineer acknowledges that the Community may not proceed with all phases of the Services. Prior to proceeding with a new phase of the Services, the Engineer shall obtain a written authorization from the Community to proceed with such phase. If the Engineer proceeds with a Phase prior to obtaining the Community's written consent to proceed with such phase, the Community shall not owe the Engineer any Fees for such Services performed by the Engineer in the unauthorized phase of the Services. Additionally, the Engineer acknowledges and agrees that the Community may send written notice to the Engineer to cease performing the Services at any time, and upon receipt the of the same, the Engineer shall cease performing Services immediately and shall not resume the Services until the Community provides its written authorization to do so.

The Services are broken down into the following Phases:

1. **Phase 1 – Preliminary Engineering and Pre-Design Report** – preparation of preliminary engineering and pre-design report, together with attendance at all meetings with the Community in relation thereto;
2. **Phase 2 – Design** – Detailed design engineering of the Project complete with drafting and tendering, which includes the following:
 - (a) assistance in the preparation of pre-qualification documents for procurement tenders or proposals;
 - (b) assistance in the preparation of pre-selection documents for procurement tenders or proposals;
 - (c) preparation of engineering documents (including design drawings, specifications, and detailed calculations);
 - (d) review and coordination with other design disciplines;
 - (e) preparation of quantity takeoffs;
 - (f) preparation of documents in support of applications for approval from authorities having jurisdiction for the Project or designated specific aspects of the Project;
 - (g) submission of engineering documents for review and approval by the Community;
 - (h) preparation and submission of construction contract documents for review and approval by the Community (where the Engineer is the lead professional);
 - (i) review of construction contract documents prepared by others;
 - (j) advice regarding the preparation of request for proposals, requests for qualifications and tender information;
 - (k) assistance in the preparation of tender documents incorporating relevant engineering documents, construction contract documents and other documents prepared by Engineer;

- (l) assistance in obtaining tenders and addenda;
 - (m) review of tenders; and
 - (n) assistance in the preparation of the construction contract;
- 3. Phase 3 – Inspection, Review, and Contract and Construction Administration –** Contract administration and construction management, technical review, and resident engineering during construction, which includes the following:
- (a) full time Project site supervision and construction coordination;
 - (b) regular construction site meetings are expected to be scheduled on a **monthly** basis. Minutes are to be taken at the monthly site meetings and subsequently distributed;
 - (c) attendance at meetings necessary to the coordination of the design, construction administration services, and completion of the Project;
 - (d) preparation and distribution of notices of change, change orders, and other necessary Project documentation during the course of the completion of the Project (where the Engineer is the lead professional) as may be contemplated within the Construction Contract;
 - (e) obtain advice, data, and information from the Engineers when required;
 - (f) review of the shop drawings as provided for in the terms of the construction contract documents;
 - (g) monitor compliance with the program of construction reviews and testing which may be required by the Engineer or imposed by law in connection with the completion of the Project by the Engineer;
 - (h) interpretation of the construction contract documents (where the Engineer is the lead professional and if so provided in the construction contract);
 - (i) evaluation of the Engineer's applications for payment;
 - (j) certification of the Engineer's applications for payment (where the Engineer is the lead professional);
 - (k) review of the an application for substantial performance of the Project noting defects and deficiencies observed in the Project;
 - (l) certification of the Engineer's substantial performance of the Project, (where the Engineer is the lead professional);
 - (m) review of the correction of defects and deficiencies observed in the Project when completed;
 - (n) arranging for reference surveys for use in the Engineer's layout of the Project (not including surveys of legal property boundaries);
 - (o) review of Engineer's surveys and layout;

- (p) regular site reviews of the work of the Engineer to ascertain if the reviewed work is in general conformance with the construction documents;
 - (q) arrangement of field-testing and inspection of materials and equipment for Community's quality assurance program;
 - (r) investigation, reporting and providing recommendations on unusual circumstances that arise during the Project implementation;
 - (s) maintenance of sufficient date to outline current progress of the work;
 - (t) quantity measurement and records; and
 - (u) construction completion inspection at the conclusion of the Project construction contract;
4. **Phase 4 – Post Construction** – post construction services, including commissioning and record drawings, which includes the following:
- (a) periodic site visits;
 - (b) provision of commissioning and start-up supervision and assistance;
 - (c) collection and organization of operating and maintenance manuals;
 - (d) identification of deficiencies during the commissioning period;
 - (e) assistance with project warranty issues during the guarantee period;
 - (f) final inspection at the conclusion of the warranty period;
 - (g) preparation of Final Acceptance Certificate;
 - (h) assistance with contract closeout and wrap up procedures;
 - (i) record testing; and
 - (j) drafting and administrative time for the preparation of record drawings and related documents;

together with such other services as are reasonably requested by the Community, or to be reasonably inferred.

SCHEDULE "B"

FEES & EXPENSES

[BLLP NOTE: Community to provide detail on the Fees to be charged during each phase – are they based on hourly rates or lump sums? Please review and we can further customize this Schedule based on how the Community usually pays the Engineers]

1. Engineer Fees – Phase 1 – Preliminary Engineering and Pre-Design Report

Fees charged for the Services pertaining to the scope of work shown as Phase 1 of Services shall be on a basis of:

[BLLP NOTE: Choose one or customize as is necessary]

*The rates set out in Schedule "D" multiplied by the time spent performing the Services
OR The sum of \$_____.*

2. Engineer Fees – Phase 2 – Detailed Design Services

Fees charged for the Services pertaining to the scope of work shown as Phase 2 of Services shall be on a fixed fee basis, consisting of:

(a) Detailed Design to completion, in the aggregate of: \$_____

(b) Tender Package, in the aggregate of: \$_____

3. Engineer Fees – Phase 3 and 4 – Inspection, Review, Contract and Construction Administration, and Post Construction

Fees charged for the provision of the Services pertaining to this Phase 3 and 4 shall be on a fixed fee basis, consisting of:

(a)_____

Proposed fixed fee schedule is based upon an estimated _____ month construction period to reach substantial performance of the Engineer's work and therefore substantial completion of the Project.

4. Engineer Fees – Phase 3 – Additional Time and Cost

In the event that the substantial performance of the Engineer's Work and substantial completion of the Project is not achieved within the budgeted _____ month period, Fees charged for the provision of the Services pertaining to this Phase 3 from and after the budgeted _____ months shall be charged based on hourly rates, plus disbursements. The hourly rates of the personnel for this phase are set out in **Schedule "D"** attached hereto.

5. Invoices – the Engineer shall submit a written, signed invoice to the Community at the end of each month in which the Services are provided. In this regard:

(a) fixed fee charges for the corresponding Services as outlined above shall be billed monthly as a percentage of the completion of each corresponding stage of the Project; and

- (b) other fees provided on time and expense basis shall be based upon the hourly rates contemplated within **Schedule "D"**.

The Community shall cause the Engineer to be paid the corresponding invoiced amounts due no later than thirty (30) business days from the date receipt of the invoice.

- 6. **Travel Expenses and Disbursements** – subject always to or prior approval by the Community, the Engineer shall be reimbursed for all reasonable travel expenses and disbursements incurred in accordance with the provision of the Services and in accordance with **Schedule "D"**.

The Engineer shall submit written documentation and receipts itemizing the dates on which such expenses were incurred, and the Community will cause to be paid, such expenses at the same time as the consulting invoice.

- 7. **Minimum/Maximum Hours** – while there shall be no minimum or maximum hours as part of this Agreement to provide the Services, the Engineer agrees that it shall use its best efforts to perform the Services efficiently and effectively, and as such in a manner that minimizes the costs to the Community.

SCHEDULE "C"

PERFORMANCE REQUIREMENTS

[BLLP NOTE: Community to insert measurable performance criteria that Engineer is expected to meet.]

The Engineer shall ensure that the objectives of the Services are met. The objectives of the Services are for the components of the Services to be completed in accordance with the following time frame:

1. **Detailed Design** – completed by _____.
2. **Tendering** – commence tendering for the Project by _____.
3. **Inspection, Review, and Contract and Construction Administration** – will commence following the award of the tender and will continue for the duration of the construction schedule. The Engineer's entire completion schedule is preliminarily assumed to be _____ months, and may be up to _____ months.
4. **Post Construction Services, Including Commissioning and Record Drawings** – will commence following the completion of the Project and will continue for the duration of the Project warranty.

SCHEDULE "D"

HOURLY RATES AND DISBURSEMENTS

[BLLP NOTE: This is a sample. Community and Engineer to develop their own table of positions and rates and charge as necessary]

Senior Engineer	\$____/hour
Project Engineer	\$____/hour
Senior Project Coordinator	\$____/hour
Survey Technologist	\$____/hour
CADD Technologist	\$____/hour
Administration	\$____/hour
Travel	\$____/kilometer